



TO: Indiana's Workforce Investment System

FROM: Robert K. Robisch *WR*
Interim General Counsel

DATE: June 29, 2011

SUBJECT: DWD Policy 2010-24
Planned Shutdown Effects upon U.I. Benefits

Purpose:

To provide information regarding a claimant's eligibility for U.I. benefits during employer designated vacation periods and planned shutdowns.

Rescissions

None

Applicability

The Indiana Department of Workforce Development (DWD) establishes this policy to provide guidance regarding an individual's eligibility for unemployment benefits who agrees to an employer mandated vacation period. This policy extends to individuals who consent to mandatory vacation periods such as planned shutdowns for any length of time.

Background

An individual must be unemployed in order to be eligible for unemployment benefits. Claimants who contractually agree to the mandatory vacation periods or planned shutdown periods (paid or unpaid) are not eligible for unemployment benefits so long as they have reasonable assurance employment will continue after the mandatory shutdown or vacation period ends. *Pope v. Indiana Employment Security Division*, 500 N.E.2d 209, 210 (1986).

Contents

The applicable Indiana Code cites are as follows:

IC 22-4-3-4. Paid vacation [effective July 1, 2011].

(a) An individual is not totally unemployed, part-totally unemployed, or partially unemployed for any week in which the department finds that the individual is:

- (1) on a vacation week; and
- (2) receiving, or has received, remuneration from the employer for that week.

Mitchell E. Daniels, Jr., Governor
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(b) Subsection (a) does not apply to an individual whose employer fails to comply with a department rule or policy regarding the filing of a notice, report, information, or claim in connection with an individual, group, or mass separation arising from the vacation period.

IC 22-4-3-5. Unpaid vacation [effective July 1, 2011].

(a) An individual is not totally unemployed, part-totally unemployed, or partially unemployed for any week in which the department finds the individual:

- (1) is on a vacation week; and
- (2) has not received remuneration from the employer for that week, because of:
 - (A) a written contract between the employer and the employees; or
 - (B) the employer's regular vacation policy and practice.

(b) Subsection (a) applies only if the department finds that the individual has a reasonable assurance that the individual will have employment available with the employer after the vacation period ends.

(c) Subsection (a) does not apply to an individual whose employer fails to comply with a department rule or policy regarding the filing of a notice, report, information, or claim in connection with an individual, group, or mass separation arising from the vacation period.

This policy seeks to outline the criteria that the Department will use to determine if a claimant was on an employer mandated vacation week due to the: 1) terms of a written contract or 2) employer's regular vacation policy and practice. Additionally, this policy outlines how the employer should notify the Department of said employer-designated vacation periods.

Vacation Period Due to Written Contract or Employer's Regular Vacation Policy and Practice Defined

In order to ensure consistent application under the law, the Department will use the following criteria to determine when a claimant will be considered to be on an employer mandated vacation period or planned shutdown and thus not unemployed: 1) the employer notified the claimant, in writing, of the dates of any planned shutdown or vacation period, at least 180 days prior to the planned shut down or vacation period, or at the time that the claimant was hired; and 2) the claimant has a reasonable assurance that employment will continue after the vacation period ends. The purpose of the requirements set forth above is to show that the claimant had knowledge of the mandatory vacation periods, assented to the working conditions, and has reasonable assurance of employment at the conclusion of the periods.

Burden of Proving the Existence of Written Contract or the Employer's Regular Vacation Policy or Practice

The employer will have the burden of proving to the Department that it provided to the claimant written notice of the employer's planned shutdown or designated vacation periods. The written notice must be unequivocal in nature regarding the dates and the specific class of employees that will be affected. Provisions in the employer's handbook, established written policies, offer letters, or terms in the employment contract are examples of evidence that the employer can produce to sustain its burden.

Burden of Proving Reasonable Assurance of Employment

IC 22-4-3-5 requires that the claimant have more than a speculative return to work date. The employer must prove to the Department that the claimant had a reasonable assurance that he or she will return to work on a specified date with the same or similar employment status. *Fort Wayne Community Schools, Review Board of Indiana Employment Security Division*, 428 N.E.2d 1379, 1385 (Ind. Ct. App. 1981). Proving that the claimant had a reasonable assurance of employment is accomplished when the employer can produce a copy of the written notice that sets forth the claimant's or the affected class of workers return to work date.

Notice to the Department

In connection with the governing statutes, IC 22-4-3-4 and IC 22-4-3-5, in order for these statutes to be applicable to individuals separated from the employer during such periods, the employer must timely respond to the Separating/Base Period Employer Notice sent to the employer by the Department relative to the filing of a claim for unemployment benefits by an employee. Employers should respond to Separating/Base Period Employer Notice in the manner set forth on the Notice.

Ownership

DWD Legal
10 North Senate Avenue
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Effective Date

Immediately

End Date

Upon Rescission

Action

Indiana's workforce investment system will follow the guidance contained in this policy. Directors and managers will ensure that staff who work with this policy's subject matter are aware of the details contained in this policy and follow its guidelines